

DEAN W. ROWELL

IBLA 80-204

Decided June 26, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. N-20218.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

Where the rental payment accompanying a noncompetitive oil and gas lease offer is deficient by \$3, less than 10 percent, and Bureau of Land Management requests submission of the deficient rental along with execution of special stipulations, within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days, although signed stipulations were timely submitted.

APPEARANCES: Dean W. Rowell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Dean W. Rowell appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 2, 1979, which requested that certain special stipulations be signed and returned along with \$3 additional advance rental for his noncompetitive lease offer N-20218. Mr. Rowell's lease offer had been determined to have first priority of processing after a public drawing held September 27, 1979, for three simultaneously filed conflicting offers. 1/ The decision specifically stated:

1/ In a memorandum to the file dated December 19, 1979, signed by a BLM land law examiner, the following was stated:

Due to the miscalculation of the acreage contained in your offer, additional advance rental of \$3.00 is requested.

The special stipulations should be signed, dated, and returned to this office, along with the additional advance rental, within thirty (30) days after your receipt of this decision. If the signed stipulations and additional advance rental are not returned to this office within the specified period, your offer will be deemed rejected and the case will be closed on the records of the Nevada State Office without further notice to you.

The record shows that the decision was sent by certified mail and received by appellant October 9, 1979. Although the signed stipulations were transmitted to the State Office by October 10, the additional advance rental was not filed with the State Office. When the prescribed 30-day period ended November 8, 1979, the case was closed on the BLM records.

Appellant filed this appeal asking that the lease application be reinstated. He submits that the stipulations were filed on time, and that the lease application was in proper form, together with the advance

fn. 1 (continued)

"Oil and gas offers N-20211, N-20218, and N-20219 were simultaneously stamped in on July 17, 1978 at 10:00 a.m.. N-20211 became an issued lease on March 30, 1979 effective April 1, 1979. The simultaneous filing was discovered and N-20211 was canceled as to T. 19 S., R. 59 E., sec. 1, (all) and 12, N 1/2 by decision of July 27, 1979. A public drawing was then held to determine priority of processing. N-20218 was drawn #1. N-20219 was drawn #2. N-20211 was drawn #3. N-20219 became an issued lease for sec. 12, N 1/2.

"By decision of October 2, 1979, this office requested certain special stipulations be signed and returned along with \$3.00 additional advance rental for N-20218. That decision was received on October 9, 1979 and signed for by the applicant. The signed stipulations were received in this office on October 10, 1979. However, the additional advance rental was not received. The 30-day appeal period ended on November 8, 1979. This case file was then closed per the terms in the decision.

"On December 10, 1979, Mr. Rowell called this office to find out why he had not received the lease for N-20218. N-20219 had already issued. He was told that for failure to submit the additional advance rental requested in the decision of October 2, 1979, N-20218 had been closed.

rental payment in the amount of \$2,560. As for the \$3 deficiency, he contends that the Nevada State Office should properly have mailed him "a formal billing in the amount of \$3.00 together with the fully executed copy of the issued lease, which then would have required payment within 30 days, which is based upon the 10% rule of approximation."

[1] We find that BLM's actions were consistent with the regulatory requirement of 43 CFR 3103.3-1, which provides:

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known * * *. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

The intent of this regulation is to provide an offeror, who is otherwise fully qualified for the lease to issue, with a 30-day notice of a nominal rental deficiency of less than 10 percent, and to grant only that amount of time to correct the deficiency. The appellant in this case was not yet fully qualified for lease issuance at the time the rental deficiency notice was given. To hold as appellant suggests could require BLM to give seriatim notices of each deficiency, each with an additional 30 days to cure the deficiency. This would be patently impractical.

Further, there is nothing in this regulation that requires issuance of a lease before notice of a rental deficiency is given. In the present case, when BLM issued its decision of October 2, 1979, the lease could not properly be issued because the special stipulations had not yet been signed and, therefore, all the requirements had not been met. By the terms of the decision of October 2, 1979, which appellant received, he was given a 30-day period to cure the rental deficiency. Appellant was given adequate notice of the deficiency, specifically informed of the consequences of nonpayment, and given ample time to submit the additional \$3. When he failed to pay the additional rent within the required time, BLM properly rejected the offer and closed the case. See Hansen Brothers, 42 IBLA 40 (1979); Zona R. Jackson, 27 IBLA 217 (1976); Albert J. Finer, 27 IBLA 61 (1976).

There is, therefore, no merit in appellant's contention that he was entitled to another 30-day period pursuant to a billing after lease issuance. This practice would, in effect, grant him more than the normal 30 days envisioned by the regulation. Moreover, to require BLM to issue a lease with a second notice would be a useless repetition of an action already taken and would in effect provide appellant with a 60-day period to correct this deficiency.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

